



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0868

Introduced 2/2/2005, by Rep. Angelo Saviano

SYNOPSIS AS INTRODUCED:

New Act

Creates the Mortgage Lender's Closing Duties Act. Prohibits residential mortgage lenders and investors who receive notice of the time, date, and location of a closing from failing to provide the escrow closer with the necessary loan documents and funds. Imposes fines for violations of the Act and prohibits lenders and investors from passing on those fines as lending fees. Applies to the closing of owner occupied real property for one to 4 families.

LRB094 03453 LCB 34340 b

1 AN ACT concerning mortgage lenders.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Mortgage Lender's Closing Duties Act.

6 Section 5. Definitions. As used in this Act:

7 "Residential real estate", "lender", "borrower", "mortgage
8 loan", "residential mortgage loan", "loan broker", "loan
9 originator", "loan originating", "residential mortgage loan
10 commitment", and "escrow agent" are defined as in the
11 Residential Mortgage License Act of 1987.

12 "Loan package" refers to any and all documentation tendered
13 by a lender reasonably necessary to effectuate the escrow
14 closing, the execution of which by the borrower shall permit
15 the immediate disbursement of mortgage loan proceeds.

16 "Escrow closing" refers to the process of accepting escrow
17 funds and a loan package by an escrow agent on a residential
18 mortgage loan and the final disbursement of those funds, along
19 with the borrower's down payment, if any, and the acceptance of
20 documents from the seller of the residential real property
21 sufficient to transfer title (legal or equitable) to the
22 subject property to the borrower; and the simultaneous transfer
23 of the balance of such funds as may be due to the seller, or as
24 the seller and borrower may direct, and the delivery of the
25 documents from the seller to the borrower, including, if
26 applicable, the placing for recording of the deed or other
27 document intended to place the borrower in title to the subject
28 residential real property.

29 "Investor" refers to the entity that invests money in
30 residential mortgage loans, or ultimately provides funding
31 necessary to close a residential mortgage financing
32 transaction.

1 "Funding" and "good funds" refer to the monetary
2 consideration provided by a lender incident to and simultaneous
3 with the closing of a "residential mortgage financing
4 transaction", as that term is defined and used in the
5 Residential Mortgage License Act of 1987, and shall consist of
6 cash, a cashier's check or checks, a certified check or checks,
7 a money order or money orders, or the electronic transfer to
8 the escrow agent of such cash, cashier's check or checks,
9 certified check or checks, or money order or orders, but shall
10 not include a bank draft or drafts or the electronic transfer
11 to the escrow agent of a bank draft or drafts, nor any other
12 form of funding containing conditions precedent to the
13 negotiation of that funding.

14 "Firm written commitment for financing" means a
15 non-contingent written agreement to lend to a borrower good
16 funds secured by a mortgage against a specific parcel of
17 residential real property and which shall, at a minimum, state
18 the amount of the loan, the rate of interest per annum, the
19 annual percentage rate, and any loan origination and loan
20 discount fees, and shall be subject to only the following
21 conditions:

22 (1) no material changes in the borrower's financial
23 condition;

24 (2) the lien of the mortgage being insured by a
25 licensed title insurance company as the first and paramount
26 lien against the residential real property;

27 (3) matters of survey;

28 (4) homeowner's insurance satisfactory to the lender;

29 and

30 (5) the mortgage being funded by a date certain.

31 Section 10. Provision of loan documents. No lender or
32 investor who has issued a firm written commitment for mortgage
33 loan financing, upon receiving reasonable notice prior to the
34 closing from the buyer, the seller, or the escrow closing
35 company of the date, time, and location of the closing of the

1 purchase and sale of 1-4 family, owner-occupied residential
2 real estate, shall fail to provide to the escrow closer the
3 mortgage loan documents or loan package at the time, date, and
4 place for the closing for execution by the borrower and
5 reasonably sought by that lender as a precondition to the
6 disbursement of mortgage loan proceeds.

7 Section 15. Provision of loan funds. No lender or investor
8 who has issued a firm written commitment for mortgage loan
9 financing, upon receiving reasonable notice from the buyer, the
10 seller, or the escrow closing company of the date, time, and
11 location of the closing of the purchase and sale of 1-4 family,
12 owner-occupied residential real estate, shall fail to provide
13 to the escrow closer the necessary funding for the mortgage
14 loan in the form of "good funds" at the time, date, and place
15 for the closing for use by the borrower incident to the
16 purchase and sale transaction. Incident to the funding of that
17 mortgage loan, any lender intending to utilize an electronic
18 transfer of funding shall first secure any necessary wire
19 transfer instructions from the escrow closer and shall advise
20 the borrower or the borrower's designee in writing of its
21 intention to transfer the funding for the transaction via
22 electronic means and shall institute that electronic transfer
23 in sufficient time so that the necessary funding will be
24 received by the escrow closer prior to the time and date of the
25 escrow closing.

26 Section 20. Fees to cover lender's fines prohibited. No
27 lender or investor who has issued a firm written commitment for
28 mortgage loan financing, upon receiving reasonable notice from
29 the buyer, the seller, or the escrow closing company of the
30 date, time, and location of the closing of the purchase and
31 sale of 1-4 family, owner-occupied residential real estate,
32 shall charge or attempt to charge to the borrower a fee or
33 anything of value to offset such costs as may be incurred by it
34 as a result of the violation by the lender of any Section of

1 this Act.

2 Section 25. Notice to investor. A notice of closing as
3 described in this Act that is provided to a loan originator or
4 loan broker shall be deemed to constitute notice to any
5 investor.

6 Section 30. Violations. A loan originator or loan broker
7 and an investor who violate this Act shall be jointly and
8 severally liable to the borrower for the greater of actual
9 damages incurred by the borrower on account of the violation or
10 violations or \$1,000 per occurrence, plus reasonable
11 attorney's fees.

12 Section 35. Exemption. This Act does not apply to an exempt
13 entity as defined in the Residential Mortgage License Act of
14 1987.